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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 CAVE MAN KITCHENS INC,

9 Plaintiff,

10 v.

11 CAVEMAN FOODS LLC,

12 Defendant.

C18-1274 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) The parties' proposed judgment, docket no. 134, will not be entered by the
16 Court in its present form. The parties have provided no basis for the Court to make the
17 certification required by Federal Rule of Civil Procedure 54(b) to enter partial judgment.
18 The parties' stipulation proposes (i) dismissing without prejudice and expressly
19 preserving Counts II, IV, VI, VII, and VIII of Defendant's counterclaims "in the event . . .
20 Plaintiff's claims survive appeal" and (ii) preserving the parties' claims for costs, again
21 contingent on the outcome of that appeal—which necessarily requires this Court to enter
22 judgment as to fewer than all claims. *See* Fed. R. Civ. P. 54(b); *United States v. Gila*
23 *Valley Irrigation Dist.*, 859 F.3d 789, 798 (9th Cir. 2017). The parties' stipulation
attempts to "artificially 'manufactur[e]' finality" by keeping Defendant's dismissed
counterclaims "on ice while appeal [is being] taken from a partial judgment," thereby
"circumventing the final judgment rule and arrogating to the parties [this Court's]
gatekeeping role." *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1066 (9th Cir. 2002).
The Court will entertain a renewed proposed judgment only after Defendant's
aforementioned counterclaims have been resolved, including by a stipulated voluntary
dismissal of such counterclaims, with or without prejudice, irrespective of the outcome of
the appeal.

1 (2) The parties are DIRECTED to meet and confer and to file a Joint Status
2 Report by Friday, March 5, 2021, indicating (i) whether Defendant's remaining
3 counterclaims (Counts II, IV, VI, VII, and VIII) will be tried by the Court without a jury,
(ii) when the parties will be prepared to proceed to trial, and (iii) whether the trial can be
conducted remotely via the ZoomGov.com platform.

4 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
5 record.

6 Dated this 24th day of February, 2021.

7 William M. McCool
8 Clerk

9 s/Gail Glass
10 Deputy Clerk